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Working Group on Arbitrary Detention

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No. 16/2013 (Panama)

Communication addressed to the Government on 17 April 2013

Concerning Oscar Pompilio Estrada Laguna and Norberto Monsalve Bedoya

The Government has not replied to the communication from the Working Group.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in Council resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis for the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. According to the source, Oscar Pompilio Estrada Laguna, a Nicaraguan national, and Norberto Monsalve Bedoya, a Colombian national, both of whom have been residents of Panama since 2004, have been detained in the Migrant Shelter for Men (an administrative holding centre run by the National Migration Service) in Ancón district since 18 January 2013 and 18 October 2012 respectively.

4. The source reports that these individuals hold refugee status in Panama (granted to Mr. Estrada Laguna through resolution No. 85 of 9 June 1985 and to Mr. Monsalve Bedoya through resolution No. 1254 of 21 December 2005). Both individuals were convicted of offences that the source does not consider to be particularly serious and were given prison sentences, which they have already completed. Nevertheless, they remain in detention pending deportation to their countries of origin, in violation, according to the source, of the principle of non-refoulement (not being returned to one's country of origin).

5. The source states that the conditions in the Migrant Shelter for Men run by the National Migration Service in Ancón district are unhygienic and unsanitary, and that the two individuals are ill and are unable to obtain the medical and psychological care they need. Mr. Monsalve Bedoya has allegedly suffered a heart attack, has experienced high fevers, suffers from an inflammation of the prostate and shows symptoms of severe depression with recurring thoughts of suicide.

6. The source maintains that although the two individuals fully served the sentences handed down to them, they were not released at the end of their prison terms but were instead placed in administrative detention under the custody of the National Migration Service within the Ministry of the Interior and Justice.

7. According to the source, the right of these individuals to due process in the administrative proceedings relating to their expulsion has been seriously undermined by the fact that they have not been informed of the reasons why they are being kept in detention, and have not been allowed to exercise their rights of defence and appeal. They have not been allowed to exercise their right to appeal the deportation decisions.

8. The source also considers that there has been a violation of the principle of equality of nationals and foreigners before the law, given that a double penalty has been imposed against the two foreigners — the criminal conviction and the administrative deportation measure — which constitutes double punishment and discrimination against foreigners. This violates article 26 of the International Covenant on Civil and Political Rights, to which Panama is a party.

9. According to the source, the detention of these individuals is arbitrary and also violates article 9 of the International Covenant on Civil and Political Rights, as it is legally unfounded. It also violates articles 12 and 13 of the Covenant, which guarantee liberty of movement and the right to appeal a deportation order before the competent authority. A

foreigner can be expelled from the national territory only when the legal procedures have been followed and for compelling reasons of national security or public order, which have not been demonstrated in the present cases. The source adds that the refugee status of these individuals has not been respected.

10. The source considers that the 1951 Convention relating to the Status of Refugees has also been violated, as its provisions have been interpreted restrictively, particularly article 33, paragraph 2. Articles 72, 73 and 74 of Executive Decree No. 23 of 10 February 1988 on asylum procedures have also been violated.

11. The source adds that the violation of article 32 of the Constitution, which guarantees respect for due process, is particularly serious.

Response from the Government

12. More than four months have elapsed since the communication was transmitted to the Government, and it has still not provided the requested information. The Working Group is therefore authorized to render an opinion (in accordance with paragraph 15 of its methods of work) without any further consultations with the source.

Discussion

13. In the light of the Government's silence, the Working Group considers that Mr. Estrada Laguna, a Nicaraguan national, and Mr. Monsalve Bedoya, a Colombian national, both of whom are residents of Panama, obtained refugee status in the State of Panama, as governed by the Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, to which Panama acceded on 2 August 1978.

14. It is also taken to be true that both refugees committed an offence that they described as "not particularly serious". In fact, the Working Group has been informed that they were convicted of sexual offences, although neither the source nor the Government has specified what those offences were. However, Mr. Monsalve Bedoya was convicted of another offence which the source also fails to specify, and for which he has also completed his sentence.

15. The source does not call into question the prosecution of these individuals or the sentences handed down to them, but rather the fact that they remain in detention despite having completed their sentences.

16. Ever since the day they completed their terms of imprisonment, their deprivation of liberty has lacked any legal basis and therefore constitutes arbitrary detention under category I, as defined in the Working Group's methods of work.

17. The fact that they are being detained without any legal basis, without any legal charges brought against them and solely by means of an administrative order against which they have not been able to defend themselves, claim or establish their innocence or avail themselves of legal remedies, constitutes arbitrariness of such gravity as to fall within category III as defined in the Working Group's methods of work.

18. The source's greatest complaint is that the authorities have threatened to deport these individuals to their respective countries of origin.

19. The Working Group understands that the refugee status held by both individuals in Panama must have been granted on the grounds that each individual, in his country of origin, had a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion ... and is unable or ... unwilling to avail himself of the protection of that country" (Convention relating to the Status of Refugees, art. 1 A (2).

20. The Government has not contested this claim made by the source.

21. Nor is there any criminal record suggesting that the individuals have "committed a crime against peace, a war crime, or a crime against humanity" (Convention relating to the Status of Refugees, art. 1 F (a)), or have been "guilty of acts contrary to the purposes and principles of the United Nations" (art. 1 F (c)), or have committed a serious non-political crime outside the country of refuge prior to admission to that country as refugees, which would have made it impossible to grant them refugee status in accordance with the above-mentioned Convention.

22. Moreover, Mr. Estrada Laguna and Mr. Monsalve Bedoya have been detained with a view to deporting them to their countries of origin in violation of the principle of non-refoulement, which is strictly prohibited under article 33 of the Convention relating to the Status of Refugees.

23. Accordingly, the deprivation of liberty of Mr. Estrada Laguna and Mr. Monsalve Bedoya, from the day when they completed the sentences handed down for the offences of which they were legally convicted until the date of adoption of this opinion, is arbitrary.

Disposition

24. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Oscar Pompilio Estrada Laguna and Norberto Monsalve Bedoya, from the day on which they completed the sentences handed down for the offences of which they had been legally convicted, is arbitrary under categories I and III as defined in the Working Group's methods of work, as it is clearly impossible to invoke any legal basis that would justify it, and as they have been unable to avail themselves of legal or other remedies to secure their release.

25. The Working Group therefore recommends that Panama immediately release Mr. Estrada Laguna and Mr. Monsalve Bedoya.

26. The Working Group also considers that the Government must guarantee to these individuals that they will not be deported to their countries of origin or to any other country where their life, physical and mental integrity or freedom may be in danger.

27. The Working Group also considers that effective compensation should be granted for the damages caused by their deprivation of liberty as from the day on which they completed the sentences handed down to them, that is, from 18 January 2013 in the case of Oscar Pompilio Estrada Laguna and from 18 October 2012 in the case of Norberto Monsalve Bedoya.

28. The Working Group decides to transmit this case to the Special Rapporteur on the question of torture.

[*Adopted on 26 August 2013*]